



[4830-01-P]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-114942-14]

1545-BM08

Filing of Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations concerning the manner of filing Form 5472, "Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business." The proposed regulations would remove a current provision for timely filing of Form 5472 separately from an income tax return that is untimely filed. As a result, Form 5472 would be required to be filed in all cases only with the filer's income tax return for the taxable year by the due date (including extensions) of that return. The proposed regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472. Regulations finalizing the temporary provisions of TD 9529 (76 FR 33997, 2011-30 IRB 57), also about requirements for taxpayers filing Form 5472, will be published in the same issue of the **Federal Register** as these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-114942-14), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-114942-14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG-114942-14).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Anand Desai at (202) 317-6939; concerning submission of comments and request for hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 6038A and 6038C of the Internal Revenue Code (Code).

Section 6038A generally requires information reporting by a 25-percent foreign-owned domestic corporation with respect to certain transactions between such a corporation and certain related parties. Similarly, section 6038C generally requires a foreign corporation engaged in a trade or business within the United States at any time

during the taxable year to report the information described in section 6038A with respect to certain transactions between such corporation and certain related parties.

On June 19, 1991, the IRS and the Treasury Department published in the **Federal Register** (56 FR 28056) final regulations (TD 8353, 1991-2 CB 402) under section 6038A (1991 final regulations). The 1991 final regulations contained guidance under a number of provisions including §§1.6038A-1 and 1.6038A-2 regarding information reporting requirements under sections 6038A and 6038C and §1.6038A-4 regarding the imposition of penalties for failure to satisfy reporting requirements. Section 1.6038A-1(c)(1) defines a reporting corporation as (i) a domestic corporation that is 25-percent foreign-owned; (ii) a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States; or (iii) after November 4, 1990, a foreign corporation engaged in a trade or business within the United States at any time during a taxable year. Section 1.6038A-2(a)(1) generally requires a reporting corporation to file a separate annual information return on Form 5472 with respect to each related party with which the reporting corporation has had any reportable transaction during the taxable year. Section 1.6038A-2(d) of the 1991 regulations required a reporting corporation to file Form 5472 with its income tax return for the taxable year by the due date (including extensions) of that return. Section 1.6038A-2(d) of the 1991 final regulations also required a reporting corporation to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, PA (duplicate filing requirement). Section 1.6038A-2(e) of the 1991 final regulations provided that if a reporting corporation's income tax return is not timely filed, Form 5472 nonetheless was required to be filed (with a duplicate to the Internal Revenue Service

Center in Philadelphia, PA) at the service center where the return is due (untimely filed return provision).

On February 9, 2004, the IRS and the Treasury Department published in the **Federal Register** (69 FR 5931) final regulations and temporary regulations (2004 temporary regulations) (TD 9113, 2004-1 CB 524) under section 6038A regarding the duplicate filing requirement. The text of the 2004 temporary regulations also served as the text of proposed regulations (REG-167217-03, 2004-1 CB 540) set forth in the proposed rules section of the same issue of the **Federal Register** (69 FR 5940-01) (2004 proposed regulations). The 2004 temporary regulations provided that the duplicate filing requirement of §1.6038A-2(d) is satisfied if Form 5472 is timely filed electronically (electronic filing provision). The 2004 temporary regulations did not add a conforming electronic filing provision to §1.6038A-2(e) (containing the untimely filed return provision) because the electronic filing of Form 5472 other than as an attachment to an electronically filed income tax return was not technically possible when the 2004 temporary regulations were published. On September 15, 2004, the IRS and the Treasury Department published in the **Federal Register** (69 FR 55499-02) final regulations (TD 9161, 2004-2 CB 704) that adopted the 2004 proposed regulations without change. TD 9161 also removed the text of the 2004 temporary regulations.

As a result of advances in electronic processing and data collection in the IRS, the duplicate filing requirement contained in §1.6038A-2(d) was no longer necessary. Accordingly, on June 10, 2011, temporary regulations (TD 9529, 2011-30 IRB 57) (2011 temporary regulations) under sections 6038A and 6038C were published in the **Federal Register** (76 FR 33997). On the same day, a notice of proposed rulemaking (REG-

101352-11, 2011-30 IRB 75) (2011 proposed regulations) was published by cross-reference to the 2011 temporary regulations in the **Federal Register** (76 FR 34019). The 2011 temporary regulations provided that duplicate filing of Form 5472 will no longer be required regardless of whether the reporting corporation files a paper or an electronic income tax return. The 2011 temporary regulations implemented this change by removing the duplicate filing requirement and the electronic filing provision. As a result, the only remaining provision in the regulation for filing Form 5472 separately from the filer's income tax return is the untimely filed return provision contained in §1.6038A-2T(e) of the 2011 temporary regulations (which are being finalized contemporaneous with the proposal of these regulations).

Section 1.6038A-4(a) provides that if a reporting corporation fails to furnish the information described in §1.6038A-2 within the time and manner prescribed in §1.6038A-2(d) and (e), an initial penalty of \$10,000 (with possible additional penalties for continued failure) shall be assessed for each taxable year and for each related party with respect to which the failure occurs (subject to reasonable cause).

A Treasury decision is being published in this issue of the **Federal Register** that adopts the 2011 proposed regulations without substantive change as final regulations and removes the corresponding 2011 temporary regulations. These proposed regulations propose new changes to the final regulations under §§1.6038A-2 and 1.6038A-4.

Explanation of Provisions

A. In General

As explained in the Background section, the only remaining provision for filing a Form 5472 separately from the filer's income tax return is the untimely filed return provision contained in §1.6038A-2(e) of the final regulations. With the benefit of experience, the IRS and the Treasury Department believe that the untimely filed return provision is not conducive to efficient tax administration. More specifically, the method for filing a Form 5472 should not differ from the method (and penalties) applicable to U.S. persons that have similar international reporting obligations, for example, the requirement to file (i) Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," in the case of U.S. persons that control certain foreign corporations, and (ii) Form 8865, "Return of U.S. Persons With Respect to Certain Foreign Partnerships," in the case of U.S. persons that control certain foreign partnerships. Those forms must be filed with the filer's income tax return for the taxable year by the due date (including extensions) of the return, and there is no provision equivalent to the untimely filed return provision under §1.6038A-2T(e) of the 2011 temporary regulations that would require or permit separate filing of those forms. See §§1.6038-2(i) and 1.6038-3(i)(1). Accordingly, it is proposed that the untimely filed return provision contained in §1.6038A-2(e) be removed.

Corresponding amendments are proposed to §1.6038A-4 to update a cross-reference and delete an obsolete reference to prior internal organization of the IRS, and to §1.6038A-1(n)(2) and (3) with respect to proposed effective dates of §§1.6038A-2 and 1.6038A-4.

B. Proposed Effective/Applicability Date

These regulations are proposed to apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. See §1.6038A-1(n)(2) and (3).

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of these proposed regulations. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting information

The principal author of these proposed regulations is Anand Desai, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Part 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6038A-1 is amended by revising the third sentence of, and adding a new fourth sentence to, paragraph (n)(2), and adding a third sentence to paragraph (n)(3), to read as follows:

§1.6038A-1 General requirements and definitions.

* * * * *

(n) * * *

(2) Section 1.6038A-2. * * * Section 1.6038A-2(d) applies for taxable years ending on or after June 10, 2011. For taxable years ending on or after June 10, 2011, but before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, see §1.6038A-2(e) as contained in 26 CFR part 1 revised as of April 1, 2014. * * *

(3) Section 1.6038A-4. * * * For taxable years ending before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, see §1.6038A-4(a)(1) as contained in 26 CFR part 1 revised as of April 1, 2014.

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§1.6038A-2(e) [Removed].

Par. 3. Section 1.6038A-2 is amended by removing paragraph (e).

Par. 4. Section 1.6038A-4 is amended by revising paragraph (a)(1) to read as follows:

§1.6038A-4 Monetary penalty.

(a) * * *

(1) In general. If a reporting corporation fails to furnish the information described in §1.6038A-2 within the time and manner prescribed in §1.6038A-2(d), fails to maintain or cause another to maintain records as required by §1.6038A-3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in §1.6038A-3(f), a penalty of \$10,000 shall be assessed for each taxable year with respect to which such failure occurs. The filing of a substantially incomplete Form 5472 constitutes a failure to

file Form 5472. Where, however, the information described in §1.6038A-2(b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

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John Dalrymple,
Deputy Commissioner for Services and Enforcement.

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